



September 17, 2021

By ECF

Honorable David N. Hurd
United States District Judge
Alexander Pirnie Federal Bldg. and U.S. Courthouse
10 Broad Street Utica, New York 13501

Re: Dr. A., et al., v. Hochul, et al., 21-CV-1009 (DNH)(ML)

Dear Judge Hurd:

Plaintiffs strongly oppose the Defendants' application to schedule oral argument on Plaintiffs' motion for a preliminary injunction on Friday, September 24, 2021, instead of Wednesday, September 28, 2021, as provided in the Court's Order granting the TRO. The reasons for our opposition are as follows:

1. The Defendants' written opposition is due on Wednesday, September 22 at 5 p.m. Given that plaintiffs' counsel would have to travel to Utica on September 23, they would have less than one business day—literally only a few hours—to review, research and digest that response and prepare to rebut it at oral argument.
2. Plaintiffs' counsel are involved in other litigated matters that are very pressing next week, including co-counsel McHale's TRO application in another state, as well as assisting the clients in this matter respecting religious exemptions which, due to the TRO, are now being granted (multiple plaintiffs) or reconsidered (multiple other plaintiffs).
3. We were dismayed to learn that the Defendants have relied on this Court's TRO in arguing *against* expedited proceedings in the Second Circuit in *We the Patriots USA, Inc. v. Hochul*, No. 21-2179, an appeal from denial of a TRO against the Vaccine Mandate in the Eastern District, at the same time they argue in *favor* of expediting proceedings this case even more than they have already been expedited. (See attached letter from Assistant Solicitor Grube to the Clerk of the Second Circuit.)
4. The Defendants argue for the September 24th date on the grounds that "Defendants may fully present their positions to the Court in advance of September 27, 2021, the effective date of the challenged regulation." But the effective date of the challenged regulation is August 26, 2021, whereas the deadline for compliance is September 27. In any case, this is no reason to schedule argument on the 24th versus the 28th of September.

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In sum, Plaintiffs would be severely prejudiced by the Defendants' proposed impossible time constraint, which appears to serve no other purpose than unfairly to advantage the Defendants. We urge the Court to deny the State's request.

Respectfully submitted,

s/Michael G. McHale
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c: All counsel of record (via ECF)